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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-206810.3 **DATE:** July 20, 1982
MATTER OF: Tombs & Sons, Inc.

DIGEST:

1. GAO will not consider a protest of a bidder's small business size status because the Small Business Administration, not GAO, has statutory authority to determine small business size status for Federal procurements.
2. Allegation that a bid price is too low to permit satisfactory performance does not provide a valid basis to challenge an award to a bidder that is determined to be responsible.
3. A bidder's failure to submit an affidavit in accordance with the solicitation's standard "Affiliated Bidders" clause is a minor informality which can be waived or cured after bid opening.

Tombs & Sons, Inc. protests any award to K-P Services Company under Army invitation for bids (IFB) No. DABT31-82-B-0042. The IFB, to provide food services at Fort Leonard Wood, Missouri, was set aside for small business concerns. K-P, though not the original low bidder, is the lowest bidder eligible for award, while Tombs is next in line.*

The protester contends that K-P does not meet the small business size standard listed in the IFB, and that its bid price is too low to permit it to perform the contract requirements. We dismiss these grounds of protest. Tombs also alleges that K-P failed to

* Tombs also protests any award to two bidders who are no longer eligible for award; one withdrew its bid under the mistake procedures, and the other was found other than small by the Small Business Administration (SBA). Therefore, the protest as it relates to these bidders is academic.

comply with procedural requirements of the IFB relating to the identification of concerns with which it is affiliated.

The SBA, not this Office, has statutory authority to determine matters of small business size status for Federal procurements. 15 U.S.C. § 637(b) (Supp. III, 1979); Kelley Name Pin Co., Inc., B-204735, September 22, 1981, 81-2 CPD 242. Any size status challenge must be made according to SBA procedures, see Defense Acquisition Regulation (DAR) § 1-703(b)(1) (1976 ed.), rather than through a bid protest. Technical Food Services, Inc., B-207742.2, September 15, 1981, 81-2 CPD 219. Therefore, we will not consider the issue of K-P's size status. See Compulaser Incorporated, B-206834, April 12, 1982, 82-1 CPD 336.

Concerning Tombs' allegation that K-P's bid price is too low, the fact that a bid may be below cost does not provide a valid basis to challenge an award to a firm that is determined responsible. See Technical Food Services, Inc., *supra*. We therefore, will not consider this basis of protest either.

Tombs bases its contention that K-P failed to comply with the IFB's procedures for identifying affiliated concerns on K-P's alleged failure to submit an affidavit disclosing the names and addresses of all persons and concerns exercising control or ownership of the bidder as required by the IFB's standard "Affiliated Bidders" clause, DAR § 7.2003.12. We find no legal merit to this contention. We have consistently held that the failure to furnish an affidavit of affiliates is a minor informality which may be waived or cured after bid opening. DAR §§ 2-201(a) sec. B(ii) and 2-405(v); Professional Security Officers Co., 57 Comp. Gen. 480 (1978), 78-1 CPD 396. We therefore summarily deny this protest ground.

The protest is dismissed in part and summarily denied in part.

Milton J. Arosan
for Comptroller General
of the United States